

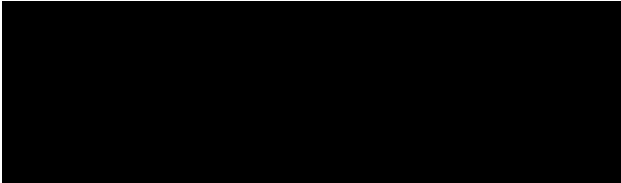
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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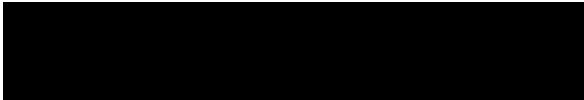
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC 02 191 52784 OFFICE: CALIFORNIA SERVICE CENTER

DATE:

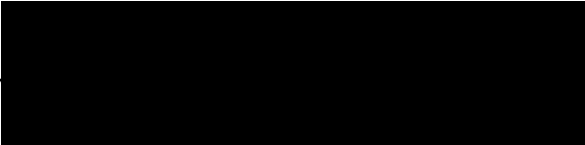
IN RE: Petitioner:
Beneficiary:



JAN 06 2004

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



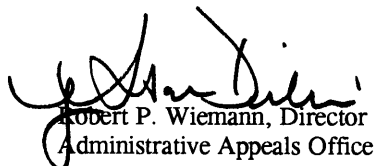
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a swap meet that employs nine persons and has a gross annual income of \$1,754,887. It seeks to employ the beneficiary as a manager. The director denied the petition because: (1) the offered position did not qualify as a specialty occupation, and (2) the beneficiary was not shown to be qualified to perform a specialty occupation.

On appeal, the petitioner submits a statement and additional evidence. The petitioner states, in part, that the position of manager is a specialty occupation, and the beneficiary's twelve years of experience is the equivalent of a bachelor's degree in business administration.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law,

theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to

perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In the original petition, the petitioner described the proposed job duties as follows:

[T]he person filling this position will direct and coordinate activities of [an] industrial organization to obtain optimum efficiency and economy of operations and maximize profit. He will also coordinate activities, such as operating, planning, maintenance to effect [sic] operational efficiency and economy. [The beneficiary] will analyzes [sic] budget to identify areas in which reductions can be made, and allocates operating budget. He will also reviews [sic] activity and operating reports.

Among other documents, the petitioner submitted an evaluation stating that the beneficiary's foreign university degree is the equivalent of a U.S. bachelor's degree in physical education. The original filing also included certificates of employment showing that the beneficiary was employed as a manager from 1990 to 2002.

The director requested additional evidence to establish that the offered position was a specialty occupation and the beneficiary was qualified to perform a specialty occupation. In response, the petitioner submitted certificates of employment from the beneficiary's previous employers and an evaluation stating that the beneficiary's work experience in management in addition to his bachelor's degree is the equivalent of a U.S. bachelor's degree in physical education with coursework in business administration. The response also included the advertisement for the instant job opening, which states, "Need Bachelor's degree in any field."

The director found the evidence insufficient to classify the offered position as a specialty occupation or to establish that the beneficiary was qualified to perform a specialty occupation. The director denied the petition on July 5, 2002.

On appeal, the petitioner asserts that the offered job entails many complex and unique duties, requiring an incumbent with a bachelor's degree. The petitioner also asserts that the evaluation indicates that the beneficiary's employment experience is equivalent to a bachelor's degree in business administration.

The job description on record is vague. However, considering the information provided about this position, the most correct job classification is that of an administrative support manager. The Department of Labor's *Occupational Outlook Handbook (Handbook)* 2002-2003 edition at page 417 describes the duties of an administrative support manager as ensuring that personnel, equipment, finances, and record-keeping, among other tasks, are all in order. Administrative support managers coordinate work assignments, resolve staff and equipment problems, and handle a variety of responsibilities to assist in the effective operation of the business. According to the *Handbook*, most managerial positions are filled by promoting workers from within. The *Handbook* does not indicate that a bachelor's degree in any specific specialty is a requirement for entry into this field. There is no other documentation on the record, either, that would indicate that a bachelor's degree is a minimum entry requirement for the proffered position.

The petitioner's job posting for the proffered position states that a bachelor's degree in any field is required. This alone would indicate that the position is not a specialty occupation, because, pursuant to Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), the required degree must be in a specific

specialty related to the employment. A requirement for a bachelor's degree in any field at all does not meet the statutory guidelines.

Moreover, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. Citizenship and Immigration Services (CIS) must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

The evidence on the record does not establish, as asserted, that the position entails duties so complex that only an individual with a bachelor's degree can perform them. The evidence does not meet any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), thus, the proffered position cannot be considered a specialty occupation.

The second issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation. As previously noted, the beneficiary holds a bachelor's degree in physical education from a Korean university. The evaluation on record states that this degree is the equivalent of the same degree issued by a U.S. university. The evaluation adds, taking into account the beneficiary's work

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *id.* at 387.

experience, that the beneficiary can be considered to have completed coursework in business administration.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The evaluation on the record, completed by International Credential Evaluators, Inc., does not meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In accordance with 8 C.F.R.

§ 214.2(h) (4) (iii) (D) (5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

CIS is unable to determine that the beneficiary's work experience is equal to a U.S. bachelor's degree, as there is insufficient information on the record regarding his previous duties. In addition, the record does not contain any documentation of the beneficiary's expertise in the specific specialty. Thus, the beneficiary cannot be considered to be qualified to perform a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.